

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

SEAN BUCCI)	
Petitioner,)	
)	
v.)	C.A. No. 13-11682-JLT
)	
UNITED STATES,)	
Respondent.)	

MEMORANDUM AND ORDER

TAURO, D.J.

BACKGROUND

On July 8, 2013, petitioner Sean Bucci (“Bucci”) filed a Petition for Writ of Mandamus and a Memorandum of Law in Support. Bucci seeks an Order compelling the undersigned to render a decision on two motions filed his criminal case, in connection with his motion to vacate pursuant to 28 U.S.C. § 2255. See Sean Bucci v. United States, CR 03-10330-JLT.¹

Specifically, these motions are: (1) Bucci’s Motion Pursuant to Rule 59 (Docket No. 533); and (2) Bucci’s Motion Pursuant to Rule 52 (Docket No. 534), both filed on October 7, 2011. Bucci contends that these motions have sat dormant for 17 months, and as a result, he is being denied due process because he is unable to seek a Certificate of Appealability.

Along with the petition, Bucci filed a Motion for Appointment of Counsel (Docket No. 3).

DISCUSSION

On April 8, 2013, this Court issued a written Order in Bucci’s criminal case (Docket No. 540) denying both of his motions (*i.e.*, Docket Nos. 533 and 534). Thereafter, on June 2, 2013,

¹The Clerk’s Office assigned the petition to this Court as related to the criminal case.

this Court issued a Memorandum and Order (Docket No. 557) on Bucci's Application for a Certificate of Appealability (Docket No. 556). In that Memorandum and Order, Bucci was granted a Certificate of Appealability as to his first and third claims,² but he was denied a Certificate of Appealability as to his second claim, which alleged ineffective assistance of counsel based on counsel's failure to object to Bucci's sentence in excess of the statutory maximum on counts 5-13 of the Indictment.

It is unclear why Bucci filed this petition, but this Court presumes he was unaware of the rulings on his motions and on the application for a Certificate of Appealability. In any event, in light of the fact that there are no remaining issues in Sean Bucci v. United States, CR 03-10330-JLT because this Court already had made rulings on the Bucci's two motions prior to his filing of the instant petition for writ of mandamus, Bucci's petition is moot, as is his Motion for Appointment of Counsel to pursue this petition.³

Accordingly, Bucci's petition for writ of mandamus will be DENIED and this action will be DISMISSED sua sponte. Further, Bucci's Motion for Appointment of Counsel also will be DENIED as unfounded.⁴

²The first claim was an ineffective assistance of counsel claim based on appellate counsel's failure to challenge on direct appeal, the instruction to the jury when an alternate replaced a juror, pursuant to Fed. R. Crim. P. 24(c)(3). The third claim alleged ineffective assistance of counsel based on appellate counsel's failure to challenge on direct appeal the district court's decision to allow 11 jurors to deliberate, pursuant to Fed. R. Crim. P. 23(b)(3).

³In view of the fact that it is crystal clear that Bucci's petition has no merit because the relief he seeks already had been given to him, there is no need to direct reassignment of this case to another District Judge.

⁴Bucci failed to pay the \$400 filing fee for this mandamus petition or seek leave to proceed *in forma pauperis* (a \$350.00 filing fee is imposed on prisoners who are proceeding *in forma pauperis*). In view of this *sua sponte* dismissal, this Court will not address Bucci's filing fee obligations. Nevertheless, for purposes of 28 U.S.C. § 1915(g), this Court deems the

CONCLUSION

Based on the foregoing, it is hereby Ordered that:

1. Petitioner's petition for writ of mandamus is DENIED;
2. This action is DISMISSED in its entirety; and
3. Petitioner's Motion for Appointment of Counsel is DENIED.

A copy of this Memorandum and Order shall be transmitted to the First Circuit Court of Appeals Clerk's Office in connection with USCA No. 13-1790.

SO ORDERED.

/s/ Joseph L. Tauro
JOSEPH L. TAURO
UNITED STATES DISTRICT JUDGE

DATE: July 15, 2013

dismissal to be one based on the merits.